

# EXHIBIT 30

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION  
ORACLE AMERICA, INC.,  
Plaintiff,  
vs. Case No. 3:10-cv-03561-WHA  
GOOGLE, INC.,  
Defendant.

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PURSUANT TO THE PROTECTIVE ORDER  
VIDEO DEPOSITION OF JAMES MALACKOWSKI  
San Francisco, California  
Wednesday, March 17, 2016  
Volume I

REPORTED BY:  
REBECCA L. ROMANO, RPR, CSR No. 12546  
JOB NO. 2265299  
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discussed in your initial report, the Android-related TAC Google pays to wireless carriers is captured and accounted for in Android profit and loss statements as apps and digital content of sales."

A. Yes.

Q. Do you see that?

A. Referring to Footnote 61, yes.

Q. Right. What's your basis for saying that the Android-related TAC is included on the Android P&L under the apps and digital content categories?

A. So in some respects this is the most complex part of the whole accounting analysis, so maybe I can describe in -- in more detail.

If you look to the recent Google P&L management reports that included ad revenues, TAC was lumped into a single bucket for ads whether it was search, AdSense or display.

In looking at the Google management records, a decision was made internally to remove ad revenue from this management report. And there's then discussion of how Android is not profitable, because there was a huge chunk of revenue that was left out.

And the question is, when they removed

the revenue from the management reports, did they also remove the associated traffic acquisition cost?

In my investigation, I concluded that they did not. That those traffic acquisition cost remained within the P&L. And I was able to confirm that in a variety of ways.

My first inclination that this was the case is that if you looked to digital content, for example, and you understood that the digital content revenue was 100 percent of the revenue paid by consumers, the digital content cost was greatly in excess of the revenue by tens or hundreds of millions of dollars, which clearly doesn't make any sense unless there would be other cost within that component.

And so I then investigated through questions that I asked be directed to Mr. Gold in his deposition as to what was the components of the digital content and app cost of sales.

And what Mr. Gold says in his deposition is that those represent the integrated payments to carriers. And he's asked in further details of what exactly are those payments for.

And he explains in his deposition that

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those payments are for credit card processing fees, for digital content cost when they pay for digital content -- but largely speaking, they don't acquire digital content -- and payments to carriers for things that include search.

And so, in my opinion, the record is clear that the cost associated with ad search remained within that P&L and those other line items.

I then set that analysis aside and reviewed the calculation that Dr. Leonard undertook where he attributed relatively greater TAC cost -- incremental TAC cost to search.

And what I found and is explained in my report, the data that Dr. Leonard relies upon is effectively equal to what's reported in the 10-Ks as TAC associated with non-Android search.

And so it became clear to me that Dr. Leonard was overcounting. Because, A, he didn't recognize that the search TAC was already within the P&L and not removed when they moved -- removed the revenue line item. And, B, his incremental TAC cost was related, as I determined from the documents, to non-Android elements, so there would be no reason to burden an Android

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profit allocation with that number.

I apologize for the long answer. It's discussed at great length within the report. But this is perhaps the most accounting complex nuance or dispute between Dr. Leonard and myself.

Q. Mr. Malackowski, isn't what Dr. -- strike that.

Mr. Malackowski, isn't what Mr. Gold actually said at his deposition that the apps in digital content cost of sales line items include only payments to mobile phone carriers for direct carrier billing, not for all content acquisition?

A. No, that's not true. There are several points within Dr. -- Mr. Gold's deposition where he's asked this question. And I think you have to look at the content of the deposition holistically.

But he specifically says more than once that the payments to carriers includes search.

Q. He says the payments to carriers on the apps and digital content sales items reflect search.

A. Exactly. And believe me, this is --

Q. Where is that in Mr. Gold's deposition? Can you point to --

A. I don't recall if it's in my report

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period, desktop search to TAC is irrelevant.

In fact, there's -- there's evidence in the record that says that the search inactivity on Android is different than what happens on --

Q. Mr. Malackowski, I'm not talking about desktop --

A. -- desktop.

Q. -- TAC. I don't know why you're talking about desktop TAC.

I'm talking about Android TAC as a percentage of Android advertising revenue.

A. Because the Leonard analysis starts with desktop, in my opinion.

Q. In your opinion. What's that based on?

A. I explained it to you. But if you look at page 20 of my rebuttal report, Figure 3, you can see the first line items, "Google total AdWords TAC," is the numbers that Dr. Leonard starts with.

Let's look at 2014, [REDACTED] But if you look at what the financial statements say for TAC paid to non-Android operators, [REDACTED] If you look at the TAC paid to distribution partners, which is non-Android, it's Apples of the world, 3.6 billion.

So if this is really -- the numbers

that -- that Dr. Leonard is starting with is really total, total, it has to be greater than the non-Android stuff to start with, and it isn't.

And at a minimum, it seems to be substantially overlapping with and coexistent with the non-Android stuff.

And so his number just cannot be -- his global total number cannot be just -- cannot be relevant.

And, again, go to the fundamental premise. Why is Dr. Leonard having to approximate TAC for search, TAC for Android Search?

Google has sufficient detail to pay each and every individual Website owner their -- a check for when search is conducted on their Website.

They had these records in extraordinary detail. And it does not make sense to me that in spite of that their economist has to start with an overall global approximation.

Q. You don't know anything about what kind of records Google has, do you, Mr. Malackowski?

A. Well, I do in the sense that I have reviewed the record of this case. I do in the sense that I have personally implemented a Google AdSense program on our Website, and they wrote me

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checks.

Somehow, they figured out how much the search activity my Website resulted in traffic acquisition payments to me as Jim Malackowski.

Well --

Q. You think --

A. -- if they can do that, they can aggregate it.

Q. You think Google does that in the ordinary course of its business?

A. Pays individual Website owners?

Q. No. No. No. Aggregates all payments to all Websites.

A. I don't know. Dr. Leonard's analysis suggests that it doesn't. I'm just telling you, as an accountant CPA for 30 years, given the level of sophistication of Google as a company, I find it unusual.

And, more importantly, as a result of them not doing it -- let's just assume they don't. As a result of that, Dr. Leonard has pulled total global figures, which clearly cannot be specific to Android.

And it's clearly not fair to make a comparison between total global TAC driven by

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desktop and Android TAC. The mix is the same, the -- the use of search is different.

There's no reason and Dr. Leonard provides no reason why those should be comparable metrics.

Q. How is the global desktop search different from mobile search?

A. It's different in that the activity of a user, the search proclivity is different. It's different in the mix between Search, AdSense and display.

There's -- Dr. Leonard provides no basis to say they would be equivalent.

Q. How is the search proclivity different between desktop and mobile users? What's that based on?

A. Within my report there's a cite -- I think it was also one that was cited by the judge in the last case -- that there's a 2 to 1 ratio of activity.

Q. Where is that?

A. In my report?

I mean, I can look for it. I'm happy to look for it. But there's a section in my report where I cite back to, I believe, the opinions of

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out, I'm sure they would have attempted something.  
What that is, I don't know. Its measure of  
success, I don't know. Whether it would have been  
launched in time to meet the window, I doubt it.

Q. Mr. Malackowski, are your estimates of --  
estimates of lost profit and disgorgement additive  
in determining the amount you believe the court  
should award Oracle, or is it your estimate of  
disgorgement partially duplicative of your estimate  
of lost profits?

A. That is a very good fourth question.

And they are overlapping. I suspect that  
there is -- I believe that there is part of the  
lost profits calculation that is not duplicative of  
the disgorgement calculation. But if asked and if  
disgorgement is, in fact, awarded, I would not  
expect the trier of fact to add on top of it my  
lost profits calculation.

MR. COOPER: Given the fact that if I  
follow up, you'll accuse of me asking you a fifth  
question, I'm not asking -- I'm not following up.  
I'm done.

THE DEPONENT: Thank you, sir.

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intellectual property over the last 30 years. But  
I think, at some great length, I identify within my  
report, and in our discussion today, that the  
methodology that's applicable for patents versus  
trade secrets versus copyrights are all very  
different.

Q. (By Ms. Hurst) If you -- in particular,  
with respect to apportionment, do you think that  
the hypothetical license or constructive license,  
or hypothetical negotiation, or willing  
buyer/willing seller approaches are the correct way  
to handle copyright apportionment?

MR. PURCELL: Object to the form.

THE DEPONENT: No, clearly, they are not.  
The only application of anything similar to that  
would be if you advanced as an actual harm element  
a loss of a license.

Q. (By Ms. Hurst) And if in -- in this  
case, in particular, are there elements in the  
record that you have seen that, in your view, would  
make those kinds of approaches inappropriate, in  
connection with profit disgorgement apportionment?

A. Well, I don't think there are at any way  
methodologically appropriate to profit  
disgorgement.

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EXAMINATION

BY MS. HURST:

Q. Mr. Malackowski, there was a reference  
earlier -- you made a reference earlier to a  
but-for analysis in connection with the causal  
nexus in the Brocade case.

Did that involve consideration of  
counterfactuals?

A. No, it did not. If you look specifically  
at Judge Grewal's opinion, the but-for analysis is  
removal of the technology, the code at issue, not  
replacement with some alternative.

Q. Mr. Malackowski, earlier in talking about  
apportionment, you referred to various experiences  
that you've had in patent cases as relevant to your  
ability to evaluate apportionment.

Do you equate your experience with the  
appropriate methodology; that is, do you think it's  
somehow the same methodology that is supposed to be  
used?

A. Clearly --

MR. PURCELL: Object to the form.

THE DEPONENT: Clearly, it is not the  
same methodology. I was referring only to my  
experience base in evaluating the contribution of

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Putting that aside, I don't think there  
is a way to properly assess a constructive license  
in this case when you understand the context of the  
negotiations between the party were about the  
elements of security and control as the driving  
factors. And there is no way, in my opinion, to  
properly assess that, based upon the facts of this  
record.

Q. And were there any other facts concerning  
the negotiations between the parties that influence  
your conclusion that somehow looking to their  
conduct is not an appropriate method of  
apportionment?

A. Sure. Notably, for example, the  
risk-taking that Google was prepared to undertake  
and, in fact, did undertake to me indicates that  
they were clearly not a willing buyer as a fair  
market valuation approach would consider.

A willing buyer does not presume that  
level of risk. A willing buyer must presume that  
the -- the asset at issue is valid and -- and  
necessary for their business.

Second, I believe that those negotiations  
occurred in the context at the very introduction  
of and prior to the Android platform, but did not

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